Supreme Court, U.S.
FILED
MAY 30 1996
OFFICE OF THE CLERK

(1)

NO. 96 158

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

CLEMENT A. ST. HILAIRE and
TIMOTHY L. ST. HILAIRE,
Petitioners,

vs.

STATE OF MAINE REAL ESTATE,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS FOR THE STATE OF MAINE

PETITION FOR A WRIT OF CERTIORARI

FOR THE FIRST CIRCUIT

Clement A. St. Hilaire
1133 Center Street
P.O. Box 3163
Auburn, Maine 04212
(207) 782-7771
Petitioners, Pro Se

Timothy W. Collier
Assistant Attorney General
State House Station 6
Augusta, Maine 04333

July 25, 1996

9 pp

QUESTION PRESENTED

1. Whether a zealous attempt to manifest a consent agreement prior to the Administrative Hearing or the subsequent constructed order was the final order or whether the Respondent pled *resjudicata* was out of order as being premature in his affirmative defense?
2. Whether the Law Court was negligent in not having read or reviewed the Petitioners' brief and documents dates with cause of failure to have associated the commissioner coercise letter of consent agreement prior to a hearing that was prior to disbursement of the final constructed decision drawn?
3. Whether a contraversy existed or arose over a constitutional violation in question of "fundamental rights" of prefabrication of an alledged complaint by the administrative action arbitrary with results of "inherent" right of power reviewable only in the Superior Court as aggrieved parties?

4. Whether the appeal taken was timely within 30 days of the final decision was an automatic stay of action before subsequent punishment of revoking the licenses for penalties or were superceded as aggrieved parties whom in fact have legal standing?

5 Whether a state Law Court could deprive any person of personal rights and liberty without due process of law is violation of the constutition or whether a violation of double jeopardy of both regulatory agencies entailed of same "fiduciary relation with both forfeiture of licenses and multiple punishments were in consequence for same acts as a concrete prejudice nature?

TABLE OF CONTENTS

QUESTION PRESENTED.....-ii-
TABLE OF CONTENTS.....-iii-
TABLE OF AUTHOEITIES.....-iv-
CONSTITUTIONAL PROVISIONS INVOLVED....-ix-
STATEMENTS OF THE CASE.....-1.-
ARGUMENTS OF COUNSEL.....-6-
REPLY QUESTION #1.....-6-
REPLY QUESTION #2.....-9-
REPLY QUESTION # 3.....-12-
REPLY QUESTION # 4 (a).....-14-
REPLY QUESTION # 4 (b).....-16-
REPLY QUESTION #5.....-18-
CONCLUSION.....-23-

APPENDIX

LAW COURT ORDER APRIL 29,1996.....-A-1-.
ORAL ARGUMENT DENIED 4,2,1996.....-A-6-
ORDER DENIED May 16,1996 .....-A-7-
SUPERIOR COURT DENIED May 17,1995...-A.-8-
ADMINISTRATIVE DECISION 11,14,1994-A-12
DENIED STAY OF ACTION 3,18,1993.....-A-15
DIRECTed TO ADMINISTRATIVE Court... .-A-19

TABLE OF APPENDIX

WRIT OF CERTIORARI INS. DENIED.....-A-20

LAW COURT ENTRY ON INS.....-A-21

LAW COURT ENTRY ON INS.....-A-22

REGULATORY INS. COM. ORDER 10,19,92 - A-24

REAL ESTATE CONSENT LETTER,12,20,91..-A-26

SUPERIOR COURT REVIEW FEB.11,1993.....-A-28

REAL ESTATE COERCISE 12,20,1991.....-A-29

COMMISSION FINAL ORDER JULY 16,1992.-A-37

REINFORCE WHILE UNDER STAY 3,11,93....-A-49

TARDIFF HIRED APPRAISAL,PRIOR,.....-A-53

EDUCATION CERTIFICATE, C,ST.HILAIRE...-A-54

EDUCATION CERTIFICATE, T.ST.HILAIRE...-A-55

ALLEDGED TARDIFF COMPLAINT.3,20,1991A-56

TABLE OF AUTHORITIES

CASES Page

Arrow Transp. Co. v. Southern R. 372 U.S. 658, 83 S Ct 945 13

Baker v Carr, 369 U S 186, 20 10

Benton v Maryland, 395 U S 784, 89 S Ct 2056, 23 L.Ed. 2d 707 (1969).....19

Bishop v. Woods, 423 U.S. 341, 48 L.Ed. 2d 684 18

Bitts v Henderson, 632 F 2d 1287 (6th Cir 1980).....17

Board of Regent v. Roth, 28 U.S.C. Section 1291, 408 U S. 564, 577, 1972. 9,17

Board of Regent v Tamanio, 446 U S 478, 64 L.Ed. 2d 440.....18

Bokala v. Town of Stoningham, 647 A.2d 85, 87 Me. (1994). 17

Bredinich v. Becton Dickinson Co., 486 U.S. 196.....9

Burke v. Pittsburgh Limestone Corp., 100 A.2d 595 18

Cardinali v. Town of Berwick, Case No. 4912 (12/2/88).....14

Celane v. Commission PA, 415 A.2d 130 Const Key 251 6 13

Colby v. York County, 442 A 2d 544 (Me. 1982).....21

Commonwealth v. Kimsley, 133 Mass 578, 1882 12,16

TABLE OF AUTHORITIES - Continued

Page

Devine v. Hodgin, 131 Me. 353, 354.....20

Douglas v. Jeannette, 319 U.S. 157.....10

Eastman Kodak v. Co. v. United States Fidelity & Guaranty Co, 8 Fr Ser 2d 17 A 14 case 1.34 Frd. 490 (D.C. Md. 1964).....21

Erica B., 520 A.2d 343.....16

Feldman v. State of Nevada #10773, 615 P.2d 238 Ins NRS 233 B 140, 51(f) 4C F.....15

Flanders v State Dept Commission, 87 Nev. 303, 486 P.2d 499 (1971).....15

Fleet Bank of Maine v. Hoff, 580 A 2d 690 (Me 1990).....17

Fletcher v Fenney, 400 A.2d 1084, 1088 (Me. 1979).....14

Fox v. Stewart, 313 N.Y.S. 2d 606 Insurance Key 12.3.....10,16,19

FTC v Cement Institute, 333 U.S. 683 1948....8

Gelchrist v Biering, 14 N.W. 2d 724, 732 Iowa 1944.....13

Gerri Golz v. Maine Real Estate Commission, 634 A.2d 1288 (1993).....17

Giberson v Quinn, 442 A.2d 1007.....11

Goss v Lopez, 419 U.S 565, 95 S.Ct 729, 42 L.Ed. 2d 725 (1975).....13,22

TABLE OF AUTHORITIES - Continued

Page

Hart v Terry L Hopkins, Inc 588 A.2d 1187 (1991).....17

Heal v. Maine Employment, 447 A.2d 1223.....20

Hiram Ricker and Son v. Student, (Me. 342 A 2d 267 16

Hoag v New Jersey, 356 U S 464 20

Holmston v Sullivan, 391 P 2d 100 19

Hough v Washington State Personal, 626 P 2d 1017.....12

In re Friedman, 457 A.2d 983 (1983).....19

Independent Broker Dealers Ass'n v. Sec., 442 F 2d 132 (D.C. Cir. 1971).. 7

Inhabitants of Augusta v Inhabitants of Vienna, 21 Me. 298.....11

Levine v. Fair, 146 A.2d 834.....11

Louise E. Hackett v. Richard L. Eaton, 389 A.2d 848 (1978).... 9

Lyons v Board of Directors, 503 A.2d 233.....7,16,17

Maine Savings Bank v. Decosta, 403 A 2d 1195 17

Martel v Town of Old Orchard, 404 A.2d 994, 995, Me. 1979.....6

McCandles Tp. v. Wylie, 101 A.2d 590 PA.....6

TABLE OF AUTHORITIES - Continued

Page

Mills v. Commission of Insurance, 736 P.2d 102 1987, Montana p 105 18

Monroe v Pape, 365 U.S. 1674 18

Nisbet v Faunce, 432 A.2d 779, 780, 81 (Me. 1981) 14

Nolan v. Wisconsin Real Estate Broker Board 89 N W 2d 317 22

North Carolina v. Perce, 395 U S. 711, 89 S.Ct. 2072, 2076, 23 L.Ed.2d 656 (1969) 19

North School Congregate Housing v. Ruth Merrithew, 558 A.2d 11899 (1989) 21

Nuger v. State Insurance Com., 191 A.2d 222 . . 14

Pattons, 393 U.S. 922 18

Perry v Sindermann, (1972) 408 U S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570, 580 (1972) 13

Porter v. Investors Syndecate (1932), 287 U S 461, 76 L.Ed. 1226, 52 S Ct. 617 14

Pozner v. Mauck, 383 N.E. 2d 203 Insurance Key 4 12,22

Raley v. Ohio, 369 U.S. 423, 436, 79 S.Ct. 1257 (1959) 12

Randono v Nevada Real Estate Com. 379 P.2d 537 Broker Key 3 9

Ray v. Town of Camden, 533 A.2d 912 (Me 1987) 14

TABLE OF AUTHORITIES - Continued

Page

Richardson v. Perales, 402 U.S. 407.....20

Richardson v. Perales, 408 U.S. 389, 410 (1971) 13

Robinson, 19 Wall 505, 512 U S 1874 13

Schilling v Rogers, 363 U S 666, 4 L Ed 14-78, 80 S.Ct.....8

Sewall v. Spinney Creek Oyster Co., Inc., 421 A 2d 36 (1980) 11

Shaw v State Real Estat Commission, 428 A.2d 407.....20

State v. Glusman, 651 P.2d 639 Const. 136....19

Thompson and Wolfsohn, 371 U.S. 215 (1962)...22

United States v. Jiles, 658 F.2d 194, 3d Cir 1981 14,17

Wilson v Nord, 597 P.2d 914 12

Withrow v Larkin, 421 U S 35 8

Wolff v Selective Service No 16, 32 F 2d 817 (2d Cir. 1967).....8

CONSTITUTION

Article VII 11
Article XIV.....10
1947 Article I, Part ID 11
U.S. CA Amends 5, 14 p.986.....19
U S CA Amend 14 13
U.S. CA Article 1, Sec. 10 cl.1.....19,20
U S 14 Section 1, 64 L Ed 2d at 452 18
U.S. CA Art. 1-10 Me. Law 323, 192.....11

TABLE OF AUTHORITIES - Continued

Page

CONSTITUTION (con't)
Maine Article I, 6 and 21.....11
Maine Article I, Sec. 20 (1820).....21
5 U.S.C. Section 554(d).....8
28 U S C Section 1343 13

STATUTES and REGULATIONS
384 Administrative.....7
Administrative Procedure Act 8
Administrative 763 by West RCWA Const. Art 4 6 12
Administrative Rule Section 1291.....15
Administrative Schwartz, p.227 Personal Rights.....12,16
2 Am Jr 2d Administrative Law p 611 8
Maine Administrative Procedure Act, 5 M R S A 11001(1) Supp 1984, 1985...13
Maine Public Act 78, 637.....22
5 M R S A 9057 (1979) 20
Appeal Civil Rule 58, 79.....17
M R S A 60(b). 21
M.R.S.A. Rule 76(F).....15
Rule 60(b) M.R. Civ.P. Restatement of Judgment, Ch. 5 (1942).....9

MISCELLANEOUS
Columbia Law Review Rule 60(b).....22
9.5 Calton CA 2 N.Y. 291 F.2d 487.....16
Davis Law Review, Vol. 65, 91..... 22
Dorsey's Law of Maryland, 1777 ch.6 Law 1801, ch 74, 32 22
2 R. Field v. McKusick and L. Wroth Maine Civil Procedure, 272 U.S. 375, 71 L.Ed. 303.....9
SHA Ch 73 1065, 36 1065.59 Ill. Law..12,18

CONSTITUTIONAL PROVISIONS INVOLVED

UNITED STATES CONSTITUTION
FOURTEENTH AMENDMENT

No State Shall . . . deprive any person of life, liberty, or property without due process of law.

FIFTH AMENDMENT

Guaranty against Double Jeopardy, for the same cause of action.

CONSTITUTION
ARTICLE I

A fair Impartial Hearing, and Free acess to the Courts.

CONSTITUTION
ARTICLE XI

Not to be deprivd of a full Hearing.

CONSITUTION
ARITCLE XII

With request not to be deprived, of a Trial by Jury.

CONSTITUTION
ARTICLE XIV

Citizen rights not to be abridge, nor shall any states deprive any person of or their property rights.

STATEMENT OF THE CASE

The Petitioners, Clement A. St. Hilaire, and Timothy L. St. Hilaire, requesting in Motion to the Supreme Judicial Court a Certiorari Review by the Supreme Court of the United States. The Review of Maine Law Court Order Docket No. CY-95-326 that was decided on April 29, 1996 of the Dismissal Order. Dismissed with prejudice and enmity, their reason was with the Defendants' being Pro Se, and the Court's refusal having taken the time to evaluate the contraversal merits of issue.

The results were serious enough to violate the Constituional Rights of due process of law. The denial of a fair trial of appeal or oral hearing. The Defendants impossiblity to contest without oral argument but Law Court as Prosecutioner decided.

The Law Court denied the Petitioners' as person independent within its juridiction, the equal protection of the law the "evading review". The reply in decision order, that lead to a concrete dispute and presented actual matters of contraversey and "want of Subject Matters. In equity, the loss was of a livelihood of two licenses as real estate broker's income for the past four years.

The denial of the commissioners stay of

action which was requested, with their coercise punishment intent, and fortified by the Administrative Court and affirmed by the Superior Court as denial of licenses use.

The Petitioners had requested in motion to the Law Court, for relief from the Judgement dated April 29, 1996 under M.R.S.A. Rule 60(a)(b) and Rule 59(a) was denied, and dismissed. The Law Court Order stated the Petitioners never appealed the 1991 Letter of Consent that was a zealous attempt to manifest a coercive agreement with intent prior to the Administrative Hearing. The "Test" interest protected by the Constitution guarantees, the question of standing with an aspect of reviewability. The subsequent constructed Order dated July 16, 1992 was a final order.

The Respondent plead of *res judicata* was out of order, and being premature in his affirmative defense. The Respondent refusal to correlate the true document argues.

The documents from the Maine Real Estate Commission were received as follows: December, 1991 letter of consent due no later then January 7, 1992 of an alleged charge without a formal hearing, a mere plea bargain in requested by the Commissioner. Exhibit "I" attached.

The Complaint on March 20, 1991 was

'Technical" in nature, of custody and care, that was never an agreed issue on the listing contract was later acknowledged and agreed in person by the owner/client in person at the February of the Real Estate Commission hearing. That was delayed in its duty by 16 months, of their final decision made on July 16, 1992.

Now comes being apparent, the argument seen of a different nature. The issue remains first in question of jurisdiction as to Constitutional the rights of the parties, to elect to present their merits of issue, when aggrieved by agencies by a form of infringement, of the Constitutional law. The rules regulation that have presided over inherent rights entitled, in the Superior Court whom as parties aggrieved by Administriatve agencies for violation of legal rights.

The year 1991, during the same time frame, alleged Complaint was filed with the Maine Insurance Department, the Petitioners appeal to the Maine Law Court as aggrieved parties, Law Docket No. KEN-92-536 Appeal was filed one day over the thirty days. Being aggrieved the statute provided 60 days appealablability however, denied on November 6, 1992. The Petitioners had filed an appeal for a Writ *Certiorari* entitled case as Docket March 25,

1993 as No. 93-16, on October 4, 1993 the case was *Writ of Certiorari* was denied.

The both Maine Regulatory Agencies one within the same year, within two months the insurance revoked the licenses Clement and Timothy St. Hilaire of fiduciary relation to clients on January, 1992 and the Maine Real Estate Commission had attended all the insurance hearings and with prejudice, to established their own complaint, of technical venture of Timothy. Failure to advice in property appraisal value. The results of owner and broker entailed with the same cause of action fidcuiary relation, with the same nature, of forfeiture of licenses, insurance and real estate, multiple punishments, were in consequence for same acts, a concrete prejudice act "of Fundamental rights". The state Law Court deprived the Petitioners personal rights, of liberty without due process of law, was a violation of the Constitution and of double jeopardy of both Regulatory Agencies same cause and punishment.

Aggrieved as parties conductively, the Petitioners had appealed the Maine Real Estate final order on August 13, 1992 in the Superior Court in Augusta, Maine. Case was dismissed and directed to the Maine Administrative Court.

The decision had been taken to the Administrative Court was held at Cumberland County Maine, by Justice Beaudoin J. on November 22, 1994. The Petitioners had requested a relief, from the order, in review under Rule 60(a) of an oversight of facts. Administrative hearing had taken place and the Justice denied a full hearing on November 14, 1994 there was a logography of denial and lack of a tribunal hearing. The Real Estate Commission had failed to address the proper parties and their privies, and to their liability within Partnership. Their alleged complaint fixed for the Commission benefit and was never acknowledge or affidavit of notice. The hearing had lack specific evidence logical doubt to have support of their prefabricated complaint. The hearing testimony, one mans erroneous say, in lack of truth, and his self incrimination. The Commissioners had failed to acknowledge the proper exhibits of facts presented on the controversey within market to value and opposed by the demand of the owners of their Yankee wants.

In Petitioners unbroken chain of events of the Court's appeals and Plaintiffs' were given notice, in Petitioners defense, of a Unus Questioning the merits, their case lacked

evidence and doubt with reason. The appeal was straight and forward, and was never given Unus of all tier of facts, but error in merits of their authority failure to hear the whole matter within the true conductive evidence. The Petitioners were victimized as pro se, denied due process of law on personal rights constitutionally.

THE ARGUMENT OF COUNSEL

Whether December 1991 directive letter of coercise consent agreement was in question of Appeal. The Law Court's refusal in 1993 of a request by the Petitioners of the order exhibited in the Appendix p.A-18 was denied as not being final for review. In the theories of *Martel v. Town of Old Orchard*, 404 A.2d 994, 995, Me. 1979. Judgment becomes final when it dispose of the action, leaves no further question consideration. *Appeal and Error Key 80(1)* Failure to dispose of the whole cause and fully decided. *Judgment Key 540.* Valid same parties same cause of action was essential upon the merits. *McCandles Tp. v. Wylie*, 100 A.2d 590 PA. Parellel to bar: Declaratory Judgment was requested, decision had establish a regretable precedent which could come back to haunt us. Zealous attempt manifestly

erroneously. See *Lyons v. Board of Director*. 503 A.2d 233,. The chain of events were never broken from the final decision acknowledged on July 16, 1992 and appealed August 13, 1992. There was only a subsequent reinforcement order. *107 Congress Rec. 6454, 1961 April 27, No. 16.* Ex parte basis see the exhibit at pp. A-42 and A-43 for information solely with respect to the status of a proceeding. Prohibited communication are to be included in public files. Suspension or revocation of the privilege to practice benefits or licenses, sought and suspension, or dismissal, or dismissal of agency parellel to bar. The Maine Real Estate Director and assistant had attended all Petitioners insurance license inquiries which consisted of five daily meetings, for the purpose sought of suspension or revocation of licenses. There existed three informal adjudications, five investigations, six prosecuting orders from the courts, *384 Administrative* involved ex parte contacts of pressures. The Commissioners deliberately set about to achieve a suspension with publication deemed objectionable.

See *Independent Broken Dealers Ass'n v. Sec.*, 442 F.2d 132 (Dc. Cir. 1971). Ripe for review "What we are saying is that the use of

these pressures by the Commissioners amount to more than a mere invitation to voluntary a compliance and coercise with both an element of undue influence, and sufficient dangers of intrusion into matters beyond the scope of the Commission's power, as to require some judicial review of their propriety, authoritative declaration of policy unripe for challenge with lack of present effect. See. *Wolff v. Selective Service No. 16*, 32 F.2d 817 (2d Cir. 1967). The Court said "it matters little whether his directive is a "rule" an "order", a set of instructions, or only a *sui geneous* "directive". Whatever it is in law it purports authoritative declaration of policy, 2 Am. Jur. 2d Administrative Law P. 611 "Test" whether question, whether the conclusion of the agency was correct, or whether its act was properly jusitifed and whether the facts or evidence warrent it. *Schilling v. Rogers*, 363 U.S. 666, 4 L.Ed. 14-78, 80 S.Ct. displays the charges are in excess of power or error. Combination of function Administrative Procedure Act. 5 U.S.C. Section 554(d) provides no employee engaged in the investigating or prosecuting may not participate or advice bias or prejudgment. See *FTC v. Cement Institute*, 333 U.S. 683 1948; *Withrow v. Larkin*, 421 U.S. 35 care remanded at

bar other case filed as pro se. Appealable Davis Law one year to date. 2 R. *Field v. McKusick and L. Wroth Maine Civil Practice*, 272 U.S. 375, 71 L.Ed 303. "Property" lack cause and beyond frivolous *Board of Regent v. Roth*, 28 U.S.C. Section 1291, 408 U.S. 564, 577, 1972. *Bredinich v. Becton Dickinson Co.* 486 U.S. 196, Tenth Amendment, final decision only are appealable on their merits ends the order and litigation.

Maine Constitution in response to the State's Motion to dismiss the Superior Court. See, *Louise E. Hackett v. Richard L. Eaton*, 389 A.2d 848, Aug. 11, 1978 appeal sustained judgment vacated case remanded. Appellee pleaded res judicata as an affirmative defense. See 4th sentence, Rule 60(b) M.R. Civ. P. Restatement of Judgment, Ch. 5 (1942). Dismissal of the complaint on the grounds of res judicata was premature.

2. Whether the Law Court was negligent in not having reviewed the documents or brief one instant the denial of a stay of action upfront.

Randono v. Nevada Real Estate Com., 379 P.2d 537 Broker Key 3. Commission revocation of license any and all license pocket cards issued him, was not stayed pending (element of influent to bar). We think the demands of

justice have already been met" reversed abused its discretion in no stay of action (the action was for an alleged technical violation). Regulatory scheme of deprivation of rights secured against any state due process clause of the Fourteenth Amendment, *Baker v. Carr*, 369 U.S. 186, 200; *Douglas v. Jeannette*, 319 U.S. 157, *Theories of Fox v. Stewart*, 313 N.Y.S. 2d 606 Insurance Key 12.3. Revocation of all insurance licenses issued to real estate brokers and of all his pending application with respect to his licensing following his conviction of misdemeanor of purjury in second degree, constituted an abuse of discretion and a period of suspension would have been more appropriate. A rehearing should have been granted and should be afforded the Petitioners (case above and at bar were a double jeopardy. The documents of proof were in the appendix and were disputed evaded evidence).

The results lack a fair trial refusal of taken the time to evaluate contraversal issue, were serious enough in denial of oral argument the proper rights of due process of law. The constitution of the United States provision concerning sanction under Article VI of not to be deprived of full hearing. The Constitution Article XIV citizen rights not to be abridge

nor shall any state deprive any person of or property rights. Yet an increase of frivolous cost and overlay in charge of two parties of a $1,000.00 increase in penalties and left one party to defend with the expense of his rights. "Want of subject matter" of equity as Defendant personal property interest Article VII with requested nor to be deprived of a trial by jury.

The denial of a fair hearing from both state and constitutional rights, Article I, 6 and 21 of Maine and of the *Inhabitants of Augusta v. Inhabitants of Vienna*, 21 Me. 298. "Timeliness" which might be overcome by evidence. Theories as in bar *Giberson v. Quinn*, 445 A.2d 1007. The administrative appeal was within the constitutional rights of free access to the court to full hearing and argument in order that has merit of his side as Defendant of contraversy may be established. Consti. 1947 Art. I Part ID. *Levine v. Fair*, 146 A.2d 834. Due Process U.S. CA Const. Art I-10 Me. Law 323, 192. Pleadings should conform to Maine Civil Procedure. *Sewall v. Spinney Creek Oyster Co. Inc.*, 1980 Me. 421 A.2d 36. The "test" a judge to have forgotten to examine the issue more clearly and forgot to apply the burden of proof required to convict,

or be decided on a case to case basis. *Raley v. Ohio*, 360 U.S. 423,436, 79 S.Ct. 1257 (1959). He may be heard. *Administrative Schwartz*, Page 227 Personal Rights. In any manner a fair impartial hearing should be granted. *Commonwealth v. Kimsley*, 133 Mass. 578, 1882.

3. Whether the contraversy arose as aggrieved parties and existed with an inherent right constitutionally for an appeal.

Reviewable only by the Superior Court with the sole possession to review the alledged illegal or manifestly arbitrary and capricious nonjudicial administrative action is the basis of nature and extent magnitude of rights. *West's RCWA Const. Art. 4.6, Administrative* 763. See, *Hough v. Washington State Personal*, 626 P.2d 1017; *Wilson v. Nord*, 597 P.2d 914. The theories below are parallel at bar. *Pozner v. Mauck*, 383 N.E. 2d 203 Insurance Key 4. License insurance agent meet the licensing requirement once imposed if they wish to continue in their calling relief alleging that the statute unreasonable deprived them of their occupation without proper due process, property interest within protection. *SHA. Ch. 73 1065, 36 1065.59* Illinois Maine Law Court are eye to

eye on the inherent rights entitled to safeguard. See *Perry v. Sindermann* (1972), 408 U.S. 593, 92 S. Ct. 2694, 33 L.Ed. 2d 570, 580; *Richardson v. Perales*, 408 U.S. 389, 410 (1971) a touching upon this questin of bias *Celane v. Commission PA*, 415 A.2d 130 Const. Key 251.6. They may enjoy right and must be notified. U.S. CA Amend. 14 *Goss v. Lopez*, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed. 2d 725 (1975); 42 U.S.C. Section 1983 provides "every person who, of any statute regulation subject or cause person within jurisdiction deprived rights, privileges secured by Constitution of Law or other proper proceeding for redress 28 U.S.C. Section 1343. Hurried conference are substantial safeguard against "arbitrary action". The alledged charge cause at bar *Arrow Transp. Co. v. Southern R.*, 372 U.S. 658, 83 S.Ct. 984, ample must be afforded an opportunity of explanation in defense of not ex parte *Robinson*, 19 Wall 505, 512 U.S. 1874. In true of other occupational license of profession trade, license becomes a valuable personal right which cannot be denied or abridged in any manner of a fair impartial hearing. *2 Gelchrist v. Biering*, 14 N.W. 2d 724, 732 Iowa 1944. Maine Administrative Procedure Act. 5 M.R.S.A. 11001(1) Supp. 1984, 1985 aggrieved parties by

final action entitled to judicial review. *Nisbet v. Faunce*, 432 A.2d 779, 780, 81 (Me. 1981); *Fletcher v. Fenney*, 400 A.2d 1084, 1088 (Me. 1979); *Ray v. Town of Camden*, 533 A.2d 912 (Me. 1987). Superior Court had jurisdiction to hear constitutional issues. See *United States v. Jiles*, 658 F.2d 194 3d Cir. 1981.

4. Divided into Section (a) and (b).

(a) Whether appeal was timely with a stay of action and (b) whether the subsequent punishment was an abuse in power, as error while under a stay of appeal being aggrieved constitutionally.

(b) See *Porter v. Investors Syndecate*, (1932), 286 U.S. 461, 76 L.Ed. 1226, 52 S.Ct. 617 preclude and supercederS stay until final action of the reviewing court final action (at bar) was issued post conviction of revocation of license on July 16, 1992. See *Nuger v. State Insurance Com.* 191 A.2d 222 appeal taken within 30 days mailing notice was timely in revoking "qualifications". Judgment reversed. See *Cardinali v. Town of Berwick*, case no. 4912, 12/2/1988. 30 days after final agency board action functioning abstractions of Administrative systems are not a judgment, final decision standing, merit remain controversy, case at bar the final constructed

decision on July 16, 1992 executed the ends of the litigation leaving nothing to decide. Standing were in order practical approach to the matter particular authorization as "part merit" but rather preservation of operation, consistency, and predictability in the overall application of Section 1291 but the ongoing controversy in the proceedings are eliminates opportunity for justice to reconsideration on the merits according rather then a mere piecemeal enterprise frivolous fees are an indifferent treatment which render to attorneys fees deemed part of recovery Rule 76(F) and significant interest is deserved. Bright line rule accords the traditional understanding that a decision on the merit is a "final decision" for purpose of Administrative Law at 1291.

Theories at bar, unduly harsh and unjustified penalty under circumstances revocation of license. 9 See, *R. Feldman v. State of Nevada #10773,* 615 P.2d 238 Ins. NRS. 233 B. 140, 51(f) 4 C.F. *Flanders v. State Dept. Commission,* 87 Nev. 303, 486, P.2d 499 (1971). "Technical violations did not support revocation" Broker Key 3(f) arbitrary or capricious or characterized by abuse and clearly unwarranted. Exercise of discretion, Constitutional Law Key 88 for one who is

qualified pursuit of profession is a right, and not a matter of State's grace or favor. Conviction of misdemeanor of perjury in second degree, constituted a rehearing granted and afforded as Petitioner appropriate. *See, Fox v. Stewart,* 313 N.Y.S. 2d 606 Ins. Key 12.2.

(b) Exhibit III the Commissioners had issued a form of "Mulet, Prosecutorial Document of Punishment Sanction" on March 11, 1993. This was a subsequent reinforcement order, there was no specific form of new identity of any difference from Exhibit II merely punishment *9.5 Calton CA. 2 N.Y., 291 F.2d 487; Hiram Ricker and Son v. Student,* (Me. 342 A.2d 267). Superior Court Key 4 Punishment additional enforceability, is a judicial engraftment, we now expressly reject as unduly harsh and unsound. See, *Erica B.,* 520 A.2d 343. All major issues in the case are still subject to contention in the appeal now pending in Superior Court. Accordingly, the Law Court declined entertain if the case is disposed and action fully decided at bar the subsequent issue was additional punishment. Abridged personal rights unfair, and due for an impartial hearing of due process. See, *Administrative Schwartz, p.227; Commonwealth v. Kimsley, 133 Mass. 578 (1882); Lyons v. Board*

of Director, 503 A.2d 233, 235; Board of Regent v. Roth, 408 U.S. 564, 577 (1972); *Bitts v. Henderson,* 631 F.2d 1287 (6th Cir. 1980). Constitutional question see *United States v. Jiles,* 658 F.2d 194, 3rd. Cir. 1981. The judgment was set on inconsistence of the Administrative procedure grounds. See, *Gerri Golz v. Maine Real Estate Commission,* 634 A.2d 1288 (1993). Parallel to bar commission had lack of authoirty to impose sanction of deprived professional license. See, *Hart v. Terry L. Hopkins, Inc.,* 588 A.2d 1187 (1991). Justice Glassman J. held the lower court erred in its determination was untimely or insufficient to support its claim of meritorious defense. Mechanism which trigger running timely entry of docket. See, *Maine Savings Bank v. Decosta,* 403 A.2d 1195. Therefore, run time is totice entry of Appeal Civil Rule 58.79. Statutory language is a question for the courts. See, *Bokala v. Town of Stoningham,* 647 A.2d 85, 87 Me. (1994) leaving crystal clear rights to the whole, administrative in matter, of merit of issue, four corners are valid to review decision mandate. See, *Fleet Bank of Maine v. Hoff,* 580 A.2d 690 (Me. 1990).

6. Whether violation to constitution is valid on personal rights.

Violation of the Fourteenth Amendment in the increasing punishment of the decision set forth. See *Pattons*, 393 U.S. 922 concrete prejudice consequences. *Board of Regent v. Tomanio*, 446 U.S. 478, 64 L.Ed. 2d 440. Due process of the Fourteenth Amendemnt nor shall any state deprive any person of life, liberty or property without due process. U.S. Const. 14, Section 1 had crystalized, 64 L.Ed. 2d at 452. A litigant is not required to exhaust state remedies, *Monroe v. Pape*, 365 U.S. 1674; *Bishop v. Woods*, 423 U.S. 341, 48 L.Ed. 2d 684, second qress to be inappropriate. Evidence the Petitioners were aggrieved (see Appendix p. A-25, p.A-26) for the same cause twice vexed as Judgment Key 540 *Burke v. Pittsburgh Limestone Corp.*, 100 A.2d 595. The revocation of license prior and unsupported and their alledged claim, was clearly arbitrary as abuse of discretion. In power *S.H.A. ch. 73 Section 1065.49, 1065.52*. The fabrication of their complaint that far exceeded the original complaint. The conviction was based on bias of two regulatory agencies as "technical nature". See. *Mills v. Commission of Insurance*, 736 P.2d 102, 1987.

Montana alleged in nature page 105 authority was exceeded. See, *Fox v. Stewart*, 313 N.Y.S. 2d 6067 Ins. 12.3 conviction of misdemeanor of perjury in second degree (as to Bar), years of reputation as a broker with many years of experience. *Holmston v. Sullivan*, 391 P.2d 100. *In re Friedman*, 457 A.2d 983 (1983) Criminal Key 161. Fifth Amendment guarantee against double jeopardy protects against a second prosecution for same offense, after acquittal a second prosecution for same offense, and multiple punishments for same offense. U.S. CA. Const. Amends. 5, 14, page 986 double jeopardy enforceable against the state. *Benton v. Maryland*, 395 U.S. 784, 89 S.Ct. 2056, 23 L.Ed. 2d 707 (1969) consists of three separate constitutional protections. It protects against (1) a second prosecution for the same offense after acquittal (2) a second prosecution for the same offense after conviction, and (3) multiple punishment for the same offense. *North Carolina v. Perce*, 395 U.S. 711, 89 S.Ct. 2072, 2076, 23 L.Ed. 2d 656 (1969). *State v. Glusman*, 651 P.2d 639 Const. 136 vested rights in a given profession to subject licensing or qualifications enactments postdating such rights without running a foul, of impairments clause. U.S. CA. Const. Art. I,

Section 10 cl.1. Evidence must be clear and not in question of fiduciary fulfillment of owner wants a direct and to deliberate, the upmost of his property Devine v. Hodgin, 131 Me. 353, 354 (a fiduciary capacity) it is a duty to obtain for the principal the (largest price) and Yankee request specifically or is it conflicting of the states interpretation of the status between the statutes that are unclear to define and were they convinced the complaintant of a situation that was not consistent with the evidence, of the owners wants and his adamency as satisfactory proof of his broker's trustworthy and with competence to support his desire, (sic) failure to provide fiduciary relation, "as incontext charged," when the owner had it appraised independently. See Appraisal in the Appendix. See, *Shaw v. State Real Estate Commission*, 428 A.2d 407. Punishment being of the same conclusion *Hoag v. New Jersey*, 356 U.S. 464 ex parte of two mistrial punishment, that would legally follow the second, and or different of any value. Set on "mere uncorroborate hearsay" does not constitute substantal evidence. *Richardson v. Perales*, 402 U.S. 407; *Heal v. Maine Employment*, 447 A.2d 1223. 5 M.R.S.A. 9057 (1979). Evidence by the Court shall be

observed the rules of privilege, recognized by law. Reserved. "Tainted" "live case" and "controversey" for the same reason. We find double jeopardy is prohibitation and fundamental guarantee against, can hardly be doubted. 4W. Blackstone Commentaries *335 are protected rights. Oral argument was denied by the law appeal. See, *Eastman Kodak v. Co. v. United States Fidelity & Guaranty Co.*, 8 Fr. Ser. 2d 17 A.14, case 1:34 Frd. 490 (D.C. Md. 1964). "Controversies concerning property" Article 1, Section 20. Maine State Constitution presently provides as it did when adopted in 1820, parties shall have the right of trial by jury. See, *North School Congregate Housing v. Ruth Merrithew*, 558 A.2d 1189 (1989). (J. Alexander. Jury trial existing quasi judicial manner, judicial review Lyons case presented, the Superior Court lacked in not having seen the jurisdiction to have decided this case was arbitrary and capricous. Review offered a "Complete Remedy" (subsequent) motion not the issue at bar. Independent rights to appeal any government action to the Superior Court provides a remedy. *Colby v. York County*, 442 A.2d 544 (Me. 1982).

The courts excusable neglect of (b) unique circumstances sustained pursuant to Rule 60(b)

Columbia Law Review, Davis Law Vol. 65, 91; *Thompson and Wolfsohn*, 371 U.S. 215 (1962) parallel to bar. The complaint that far exceeded the statute. See Nolan v. Wisconsin Real Estate Broker Board, 89 N.W. 2d 317; *Pozner v. Mauck*, 383 N.W. 2d 203 Illinois as in Maine Public Act 78, 637 on their livelihood as concern. *Dorsey's Law of Maryland*, 1777 ch. 6 Law 1801 ch. 74, 32. Monetary penalties pecuniary sense, tacit acquiescense. The Fourteenth Amendment forbids the state to deprive any person of life, liberty or property without due process of law. *Gross v. Lopex*, 419 U.S. 572. Question is frivolous venture in defense of an appeal action, that constitutional and provided by law of state.

CONCLUSION

FOR THE REASONS STATED ABOVE,THIS COURT SHOULD GRANT THE WRIT OF CERTIORARI TO REVIEW THE DECISION OF THE MAINE STATE COURT OF APPEALS AND DECIDE THIS IMPORTMANT CONSTITUTIONAL ISSUE.

Respectfully submitted,

Clement A. St. Hilaire
Timothy L St. Hulaire

1133 Center Street
P.O. Box 3163
Auburn. Maine 04212
(207) 782-7771
Petition PRO Se

Timothy W. Collier
Assistant Attorney General
State House Station 6
Augusta, Maine 04333
Respondent

July 25, 1996

APPENDIX

Maine Supreme Judical Court
Report Decision #7643
Law Docket No. CUM-95-326

CLEMENT A. ST. HILAIRE, et al.

v.

MAINE REAL ESTATE COMMISSION

Submitted on briefs April 19, 1996
Decided April 29, 1996

Before Wathen, C.J., and Roberts, Glassman, Clifford, Rudman and Dana JJ.

PER CURIAM

Clement A. St. Hilaire and Timothy L. St. Hilaire appeal from the judgment of the Superior Court (Cumberland County, Bradford, J.) affirming the judgment for the Maine Real Estate Commission (the Commission) entered by the Administrative Court upholding the impositions of sanctions against the defendants by the Commission. The Commission had suspended the St. Hilaires' real estate brokerage licenses for their failure to comply with an earlier Commission order issued against them. We conclude that the St. Hilaires' appeal is frivolous, and accordingly we affirm the judgment of the Superior Court

and impose treble costs and attorney fees pursuant to M.R. Civ. P. 76(f).

In 1991, the Commission investigated allegations of professional misconduct on the part of the St. Hilaires' real estate brokerage agency. The Commission found that the St. Hilaires had violated the Real Estate Brokerage License Act, 32 M.R.S.A. Section 13001, et. seq. (1988 & Supp.) and had also violated Commission rules. The Commission ordered the St. Hilaires to each pay a fine and to attend a real estate professional responsibility course. The St. Hilaires were informed that the proper avenue for appeal of the order was through the Administrative Court, and that such an appeal had to be filed within 30 days. The St. Hilaires appealed directly to the Superior Court, and the appeal was dismissed for lack of jurisdiction. The St. Hilaires took no further steps to appeal the 1991 Commission order, not did they week to stay the enforcement of that order. Accordingly, that order is no longer subject to judicial review.

In 1993 the Commission issued a second order against the St. Hilaires for their failure to comply with the 1991 order: They had neither paid the fines nor attended the

required course. Failure to comply with a Commission order is an additional violation of the Real Estate Brokerage Licensing Act. See 32 M.R.S.A. Section 13067(a)(M) (Supp. 1995). The Commission suspended the St. Hilaires' real estate brokerage licenses until they complied with the original order. The St. Hilaires appealed the Commission order to the Administrative Court, which affirmed the Commission order. The St. Hilaires then appealed to the Superior Court, which affirmed the Administrative Court. (Cumberland County, Bradford, J.). From this judgment, the St. Hilaires now appeal.

At all points in these proceedings, the St. Hilaires have attempted to challenge the original 1991 Commission order. The time for appeal of that decision has lapsed and the decision is res judicata for this case. At this point in the proceedings, the St. Hilaires may only challenge the legal validity of the 1993 Commission order. The appellants offer no basis for concluding that any legal error was committed by the Commission. The Appeal is frivolous.

"Sanctions may be imposed when we find an appeal is frivolous or has been instituted primarily for the purpose of delay. After a

review of the brief of [the] St. Hilaire[s], we conclude that [their] appeal is frivolous and we impose sanctions pursuant to M.R. Civ. P.76(f). This appeal has 'increased the costs of the delayed the [litigation] and served to dissipate the time and resources of this court.'" International Paper Realty Corp. v. St. Hilaire, 525 A.2d 1035, 1036 (Me. 1987) (citations omitted).

The entry is:

> Judgment affirmed. Further ordered that Clement A. and Timothy L. St. Hilaire pay to appellee Maine Real Estate Commission treble costs and $1,000 as partial reimbursement of the cost of attorney fees borne by the Commission.

All concurring.

Plaintiff:
Clement St. Hilaire
Pro Se
1133 Center Street
Auburn, ME 04212

Attorney for Defendant:
Andew Ketterer, Esq.
Attorney General
Timothy W. Collier, Esq
Assistant Attorney General
6 State House Station
Augusta, ME 04333-0006

[1]This court has imposed sanctions against Clement St. Hilaire for frivolous appeals on three prior occasions. See International Paper Realty Corp. v. St. Hilaire, 525 A.2d 1035, 1036 (Me. 1987) (ordering treble costs sua sponte); St. Hilaire v. International Paper Realty Corp., 528 A.2d 446 (Me. 187) (treble costs awarded to Defendant "because [St. Hilaire's] appeal has increased the cost of, and delayed, this litigation while also serving to dissipate the time and resources of the Court."); St. Hilaire v. St. Hilaire, 567 A.2d 1349 (Me. 1990) (ordering treble costs and $600 in attorney fees because "[b]y any objective standard [St. Hilaire's] appeal is utterly frivolous.").

Supreme Judical Court
Docket No. CUM-95-326

Clement St. Hilaire et al.

v. ORDER

Maine Real Estae Commission

Upon motion of appellants for oral argument,

It is hereby ORDERED that the motion be DENIED.

Dated: April 2, 1996 For the Court,
s/Daniel E. Sutton
Chief Justice

RECEIVED April 2, 1996
Supreme Judicial Court

Supreme Judical Court
Docket No. CUM-95-326

Clement St. Hilaire
Timothy St. Hilaire

v. ORDER

Maine Real Estate Commission

Upon motion of appellants for reconsideration.

It is hereby ORDERED that the motion be DENIED. The mandate shall issue forthwith.

Dated: May 16, 1996 For the Court,
s/Daniel E. Sutton
Chief Justice

Received May 16, 1996
Supreme Judicial Court

Superior Court
Docket No. CUM-94-1207

Clement A. St. Hilaire, and
Timothy L. St. Hilaire,
Appellants

v.

State of Maine Real Estate Commission,
Appellee

DECISION AND ORDER

This is an appeal from a Decision of the Administrative Court affirming an Order of the Maine Real Estate Commission. The appellants were licensed real estate brokers doing business in Lewiston at the time of the events which lead to this appeal. On July 16, 1992, the Commission issued a Decision and Order finding that each appellant had committed three violations of the Maine Real Estate Brokerage Act or Commission Rules. The Commission imposed sanctions against each consisting of a fine against Timothy St. Hilaire at $2,000.00, a fine against Clement St. Hilaire of $2,500.00, both payable within 30 days, and both were ordered "to complete successfully (with a score on the course examination of 75% or better) the course `The

Role of the Designated Broker' on or before December 31, 1992 in addition to other continuing education requirements." The St. Hilaires did not appeal the Order of the Commission pursuant to 32 M.R.S.A. Section 13068(3) which provides that appeals shall be on questions of law only and shall be taken as provided in the Maine Administrative Procedure Act, 5 M.R.S.A. Section 11001 et seq. Instead, they proceeded in the Superior Court, where the action was dismissed. They appealed the Superior Court dismissal to the Law Court, where the documents were treated as motions and dimissed on March 18, 1993. Thus, the actin of the Real Estate Commission imposing fines and sanctions on the St. Hilaires was never legally appealed and, therefore, the Decision and Order of that agency became final. The St. Hilaires never sought a stay from any court of the sanctions.

On December 23, 1993, the Director of the Real Estate Commission, issued a staff complaint and Petition for Hearing alleging that the St. Hilairees had failed to comply with the Decision and Order of July 16, 1992 in violation of 32 M.R.S.A. Section 13067(1)(M) which authorizes desciplinary action for failing to comply with a commission

order. A hearing was held on January 21, 1993 and the Commission issued its Decision and Order on March 11, 1993. It found that the St. Hilaires had committed the violations as alleged and ordered that the real estate broker license of each be suspended until they had complied with the Order of July 16, 1992. That Order was appealed to the Administrative Court which affirmed the decision and the St. Hilaires have appealed the decision of the Administrative Court.

As found by the judge of the Administrative Court, this court also finds that the written submissions and oral arguments of the appellants are virtually incoherent. The case ciations and quotes attributed to those cases are beyond comprehension. At oral argument the court asked both appellants to explain the error committed by the Real Estate Commission which required as a matter of law that the case be remanded. Both appellants continued to argue the original action of the Commission and its Order of July 16, 1992. They do not accept the fact that the action of the Commission in its Order of July 16, 1992 is final and is not now appealable.

The action of the Commission in its

Order of March 11, 1993 is the only matter before the Court. The Commission found that the appellants had not complied with the Order of July 16, 1992 and it was authorized to taken disciplinary action. The appellants have pointed to no error of law committed in the disciplinary action taken by the Commission. Therefore, the decision of the Administrative Court affirming the Decision and Order of the Real Estate Commission of March 11, 1993 must be affirmed.

For the foregoing reasons, the entry shall be:

Appeal DENIED, case remanded to the Administrative Court for remand to the Maine Real Estate Commmission.

DATED: May 17, 1995. s/Carl O. Bradford
Justice, Superior Court

Administrative Court
Docket No. 93-059

Clement A. St. Hilaire and
Timothy L. St. Hilaire,
Petitioners,

v.

Maine Real Estate Commission,
Respondent.

DECISION FOR
PETITION FOR
REVIEW

On July 16, 1992 the Maine Real Estate Commission (Commission) issued a decision finding that Clement and Timothy St. Hilaire (the St. Hilaires) violated various provisions of Title 32 dealing with real estate brokers. The decision imposed a $2,000.00 fine on Timothy St. Hilaire, a $2,500.00 fine on Clement St. Hilaire and required both St. Hilaires to successfully complete a real estae broker education course within a certain period of time.

The St. Hilaires tried to appeal the Commission's 1992 decision to the Superior Court. Jurisdiction actually resided in the Adminisstrative Court, and the Superior Court eventually dismissed the appeal on September 25, 1992. The Superior Court order indicated that appeals must be filed in the

Administrative Court. The St. Hilaires did not then attempt to appeal to the Administrative Court.

On March 11, 1993 the Commission issued another decision, after an adjudicatory hearing and deliberations, finding that the St. Hilaires had not complied with its 1992 decison. This second decision found that failure to comply with the prior decision constituted a violation of 32 M.R.S.A. Section 13067(1)(M), and ordered that the St. Hilaires' real estate brokers licenses were suspended until they complied with the 1992 decision.

On March 18, 1993 the St. Hilaires filed a "Motion Requesting Appeal to the Administrative Court" with the Administrative Court. This constituted a timely appeal on the March 11, 1993 Commission decision and is presently before the Court for review.

The St. Hilaires' written submissions and oral argument are essentially incoherent. To the extent that the Court can discern their arguments, they appear to assert that the Commission erred in its earlier decision in 1992 and that this earlier decision should be vacated.

The Court has independently reviewed the 1993 decision and the related record of the proceedings. The Commission acted within its authority and with supporting evidence. That decision must be upheld.

The St. Hilaires did not file a timely appeal of the 1992 Commission decision in the Administrative Court. The Court does not have a proper record of the proceedings which resulted in that decision, and the Court does not now have jurisdiction to hear an appeal of that decision.

Therefore, the Clerk shall enter the following judgment:

> Petitioners' Motion Requesting Appeal to the Administrative Court denied. Decision of the Maine Real Estate Commission affirmed.

DATED: 11/14/94

s/Roland Beaudoin
Chief Justice
Administrative Court

Superior Court
Docket No. CV-92-381

Director, Real Estate Commission
vs. ORDER
Clement St. Hilaire and
Timothy St. Hilaire

Clement St. Hilaire and Timothy St. Hilaire have filed documents entitled "motion request for stay of cvil action while under an appeal of administrative court" and "motion requesting a law court review of appeal proper forum under rule 75B(c) to conserve the appeal on question of law."

Whereas no appeal from a final judgment in CV-92-381 has been docketed in the Law Court.

It is ORDERED that the above described "motions" be, and they hereby are, DISMISSED.

DATED: March 18, 1993 For the Court,
s/David S. Roberts
Associated Justice

Received March 18, 1993
Supreme Judicial Court

Superior Court
Docket No. 92-381

Clement A. St. Hilaire and
Timothy L. St. Hilaire,
Petitioners

vs.

State of Maine Real Estate Commission,
Respondent.

REQUEST FOR AN APPEAL REAL ESTATE COMMISION
OF ADMINISTRATIVE HEARING ORDER

I. Clement A. St. Hilaire and Timothy L. St. Hilaire as Respondents, we are licensed Real Estate Brokers in the State of Maine. We are in request of an appeal of the Administrative Hearing held at Real Estate Commission. The Judment was inconsistent with numerous petition were not consistent, ruled by the Hearing Commissioner Chairman Joanne Dennis.

The following grounds of pleading in defense as a Respondent of the results of the Real Estate Commission investigation under M.R.S.A. Civ. P. under Rule 73(a) Appeal to the Superior Court and Rule 52(b).

An appeal from a judgment, whenever

taken. preserves for review any claim of error in the record including any claim of error in the order.

The Respondents. Clement A. St. Hilaire and Timothy L. St. Hilaire. request a relief from the Order of the Administrative decision under M.R.S.A. Rule 60 of procedure and decision made in not reviewing all the evidence presented in its review of agency rule making powers at the time (2) as in the regulation practice is unreasonable and inappropriate; (b) plainly inconsistent with the statutes. The power of Administrative amounts of fines the first, then the additional tact on amount is contrary to the statutes of law. This service as a waiver of the monetary finds of a substantial issue lack in a jurisdiction within M.R.S.A. Rules of Court Rule 12(1), Rule 1. Failure to state claim of relief within the complaint upon which it could be granted.

(7) Purchaser rights within the care over clause of the listing contract with the "Pepin's" was proper and within the listing contract rights of the agency.

(8) (sic) the alledged charge of "You are required to respond" was hearsay. The proper responses from the Broker was we must respond

properly to the purchaser option contract, they could be your buyers and they at least deserve a reply to the offer.

(9) A full market evaluation was made by the agency to give the principal and properly advise him of the market value as to proper fidelity to the agency client.

(10) All in the interpretation of the true facts would find the real estate staff at a ludicrious disadvantage if all the true facts were reviewed properly. Yet this lack of understanding essentially the principal client previals, the lack of the client evidence that has lacked the proper truth.

(11) The facts are in the recording tapes if the proper essence of time was taken the agency would prevail with confidence. Devine v Hudgin, 131 Me. 353, 354 (a fiduciary capacity). It is the duty to obtain for his principal (large price) The St. Hilaires Agency and son Timothy L. St. Hilaire feel confident in the request of amending the order of the facts with the full intent to exercise the rights of the Superior Court of Appeal.

DATED:August 13, 1993 s/Clement A.St. Hilaire
s/Timothy L.St. Hilaire
P.O. Box 3163
Auburn. ME 04212

9/25/92 Appeal to the Superior Court
DISMISSED. This appeal must be taken
to the Administrative Court.
s/Bruce W. Chandler

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543

October 4, 1993

Mr. Clement St. Hilaire
1133 Center Street
P.O. Box 3163
Auburn, ME 04212

RE: Clement A. St. Hilaire v. Maine Superintendent of Insurance, No. 93-16.

Dear Mr. St. Hilaire:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Very truly yours,
s/William K. Suter, Clerk

CLerk of Law Court
142 Federal Street
Portland, ME 04101

Clement St. Hilaire
Timothy St. Hilaire
P.O. Box 3163
1133 Center Street
Auburn, ME 04212

RE: Clement St. Hilaire, et al. v.
Superintendent of Insurance
Law Docket No. KEN-92-536

Dear Appellants:

I note that your notice of appeal was filed (that is, received by the Clerk of Supeiror Court) more than 30 days after the entry of judgment on November 6, 1992.

s/James C. Chute
Clerk of the Law Court

cc: Robert A. Wake, A.G.S.

State of Maine
Supreme Judicial Court
P.O. Box 368
Portland, ME 04112

December 15, 1992

Clement St. Hilaire
P.O. Box 3163
1133 Center Street
Auburn, ME 04212

Robert Alan Wake Esq.
Assistant Attorney General
State House Station 6
Augusta, ME 04333

RE: Clement St. Hilaire, et al. vs. Superintendent of Insurance
Law Docket No. KEN-92-536

Dear Counsel:

The referenced matter was docketed in the Law Court on December 15, 1992, M.R. Civ. P. 73(f). The docket number assigned to this case is KEN-92-536 and it must appear on all documents hereafter filed.

The clerk must transmit the original record by January 4, 1993 M.R. Civ. P. 74A and the reporter must file the transcript, if any, by January 25, 1993, M.R. Civ. P. 74A(b). The

record on appeal will be complete upon the filing of both record and transcript.

M.R.Civ.P.74(b) requires that transcripts be ordered, the Law Court and appellee informed of that order, and financial arrangements with the court reporter be made within 10 days of the filing of the notice of appeal. Failure to comply with M.R. Civ. P.74(b) will subject the appeal to dismissal for want of prosecution.

Very truly yours,
s/James C. Chute
Clerk of the Law Court

c: Clerk Kennebec
Court reporter: none

Department of Professional and Financial Regulation
Bureau of Insurance
(207) 582-8707
Telecopier (207) 582-8716

State of Maine
Docket No. INS 91-42

IN RE:	)	ORDER OF
CLEMENT ST. HILAIRE	)	THE SUPERINTENDENT

On September 23, 1993, the above individual filed with the Bureau of Insurance a letter addressed to Pamela Charest in which he requested that his insurance agent license be reinstated.

CONCLUSIONS OF LAW

1. Title 24-A M.R.S.A. Section 1542 mandates that the Superintendent cannot reissue a license to an individual whose license has been revoked until a one year period has elapsed.

2. Title 24-A M.R.S.A. Section 1542 provides that upon expiration of the one year time period, an individual may reapply for a license and at that time must show good cause why the prior revocation should not be deemed

a bar to the issuance of a new license.

3. Maine Bureau of Insurance Regulation 350 Section 19 allows an individual to file a request for rehearing or reopening within 20 days from the date of the Order after hearing.

4. Maine Bureau of Insurance Regulation 350 Section 19 allows the Superintendent upon his own motion to reopen a case.

FINDINGS OF FACTS

1. Clement St. Hilaire's insurance agent license was revoked after a lengthy hearing by Order dated April 28, 1992.

2. Less than six months have elapsed since Mr. St. Hilaire's license was revoked. Therefore, the Superintendent cannot at this point in time act upon Mr. St. Hilaire's reapplication request. Once the time period has expired, Mr. St. Hilaire's request to be relicensed will be considered.

3. Mr. St. Hilaire has not shown in his request that a restatement of his license at this point is warranted.

4. Considering Clement St. Hilaire's letter to Pamela Charest as a Motion for Rehearing or Reopening, the Motion was not filed within 20 days from the date of the Order as required by Regulation 350.

5. Though Section 19 of Regulation 350

allows the Superintendent upon his own motion to reopen a case, no evidence has been presented which wuold justify rehearing this matter.

ORDER AND NOTICE OF APPEAL RIGHTS

IT IS HEREBY ORDERED that Clement St. Hilaire's request to reinstate his insurance license is DENIED.

This decision and Order is a final agency action within the meaning of the Maine Administrative Procedure Act. It is appealable to the Superior Court in the manner provided in Title 24-A M.R.S.A. Section 236 and M.R. Civ. P. 80C. Any party to the hearing may initiate an appeal within thirty days after receiving this notice. Any aggrieved non-party whose interests are substantially and directly affected by the Superintendent's Order may initiate an appeal forty days from the effective date of this Order. There is NO AUTOMATIC STAY PENDING APPEAL; APPLICATIN FOR STAY MAY BE MADE IN THE MANNER PROVIDED IN TITLE 5 M.R.S.A. Section 11004. PER ORDER OF THE SUPERINTENDENT OF INSURANCE THE EFFECTIVE DATE OF THIS ORDER IS OCTOBER 19, 1992.

DATED: 10/19/92 s/Brian K. Atkinson

Superintendent of Insurance

DEPARTMENT OF PROFESSIONAL AND FINANCIAL
REGULATION MAINE REAL ESTATE COMMISSION
(207) 582-8727
Telecopier: 582-5415

December 2, 1991

Timothy L. St. Hilaire
St. Hilaire Agency
1133 Center Street
Auburn, ME 04210

RE: Director v. Timothy L. St. Hilaire

Dear Mr. St. Hilaire:

Thank you for your consideratin of the proposed consent agreement in the above named matter. It appears that the agreement is not acceptable to you. Therfore, a hearing will be scheduled at the first opportunity. You will receive a written hearing notice and staff compliant prior to the hearing.

If you or your attorney have any questions, please feel free to contact the Commission office.

Sincerely,

s/Karen R. LaBree
Deputy Director

KENNEBEC COUNTY SUPERIOR COURT
95 State Street
Augusta, ME 04330
(207) 622-9357

Notice of Setting

Clement & Timothy St. Hilaire vs. State of Maine Real Estate Comm. Docket No. CV-92-381 has been set for Request for Review of Decision before Hon. Bruce W. Chandler on February 11, 1993 at 1:00 p.m. or soon thereafter.

cc: Clement & Timothy St. Hilaire
Timothy Collier, Esq.

DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
MAINE REAL ESTATE COMMISSION
State House Station #35
Augusta, ME 04333
(207) 582-8727

In Re:		
Clement St. Hilaire	)	
St. Hilaire Agency	)	CONSENT
725 Prospect Avenue	)	AGREEMENT
Rumford, ME	)	

INTRODUCTION

This Consent Agreement regarding the brokerage activity of Clement St. Hilaire is entered into pursuant to 32 M.R.S.A. Section 13069(6)(B) (1988). The parties to this Consent Agreement are: Clement St. Hilaire and Carol J. Leighton, Director of the Maine Real Estate Commission (hereinafter "Director").

FACTS

On March 22, 1991 Constance Tardif thereinafter "Tardif") filed a complaint with the Maine Real Estate Commission (hereinafter "Commission") against Timothy St. Hilaire. Based upon the staff investigation of the

complaint, the Director determined the facts to be as follows:

On May 23, 1990 Timothy St. Hilaire contacted Anthony Albert (hereinafter "Albert") regarding the possible sale of his mother's property located on Blanchette Street in Lewiston. Albert was Executor of his mother's estate. Albert did not list the property at that time.

Timothy St. Hilaire contacted Albert on two additional occasions attempting to list the property, and eventually arranged to meet with Albert and his sister, Constance Tardif, on July 14, 1990. During that meeting Albert signed a listing agreement, which stipulated among other things, that the property was to be listed for a six month time period at a sales price of $130,000.

The sale price was established by Albert and Tardif. Timothy St. Hilaire did not render an opinion of value and did not discuss whether there was any discrepancy between the listed price and market value of the property.

During the investigation Clement St. Hilaire, a broker licensed with the designated broker of St. Hilaire Agency, stated that the policy of the agency is to allow the seller to establish the listing price. When listing

property, licensees affiliated with the agency do not make a careful and thorough analysis and interpreation of all factors affecting the value of the real estate, do not routinely provide information pertaining to comparable sale, and only provide such information when specifically asked by a seller.

On January 5, 1991 Timothy St. Hilaire showed the property to Mark and Arlene Pepin (herinafter"the Pepins"). The Pepins did not make an offer on the property at that time.

On January 14, 1991 Albert's listing with the St. Hilaire Agency expired.

On January 16, 1991 Albert, Tardif and Timothy St. Hilaire met at the Blanchette Street property to discuss relisting the property. Upon arrival, Albert and Tardif discovered the carpet in the hall had been torn and a pan, which Timothy St. Hilaire had placed in a closet to collect water from a leaking faucet was about to overflow. A dispute resulted bewteen the sellers and Timothy St. Hilaire regarding responsibility for the condition of the property. The sellers informed Timothy St. Hilaire they were dissatisfied with his service, asked him to return the key to the property, and told him they would not relist the property for sale through the agency.

During the meeting on January 16, 1991 Timothy St. Hilaire informed Albert and Tardif there was a party he had previously shown the property to who was interested in the property. As a result of the conversation, the six month carry over clause was discussed and Albert and Tardif requested a list of all persons who had viewed the property through St. Hilaire Agency. Although contested by Timothy St. Hilaire, Albert and Tardif said he agreed to forward the list.

On February 3, 1991 Timothy St. Hilaire prepared an offer on the Blanchette Streeet property from the Pepins for a purchase price of $85,000. On that date, Timothy St. Hilaire went to Ablert's residence to deliver the offer. Albert refused to discuss the terms of the offer or accept delivery.

At the time of the offer a $1,000.00 earnest money deposit was given to Timothy St. Hilaire. On February 4, 1992 the Pepin's check was deposited into the agency trust account.

Also, on Feburary 4, 1991 Clement St. Hilaire advised Timothy St. Hilaire to mail the Pepins' offer to Albert, along with a cover letter, which they both signed. The letter stated, among other things that, "You are

required to, 'Respond in Kind', within three days of the submittion [sic] of this offer." and, "we hope not to have to pursue this matter under our legal authority." Copies of the offer and cover letter were forwarded to Tardif. Both letters were mailed certified with a return recept requested. Albert accepted the letter; Tardif did not. Neither Albert nor Tardif contacted the agency regarding the offer. Included with the cover letter was a list of persons who had viewed the Blanchette Street property. All the names on the list expect for the Pepins' were blacked out.

On February 9, 1991 Timothy St. Hilaire prepared another offer from the Pepins on the Blanchette Street property for a purchase during the time the Pepins were making their offer. Timmothy St. Hilaire compiled comparable sales to show that the $86,000.00 being offered was within the market value.

On Feburary 26, 1991 Clement St. Hilaire issued a check in the amount of $1,000.00 to the Pepins for the return of their earnest money deposit.

AGREEMENT

Whereas, the parties wish to conclude this matter without a hearing before the Commission they hereby agree to the following terms, subject to the approval of the Commission and the Department of the Attorney General.

1. St. Hilaire acknowledges all the facts set forth above as true to the best of his knowledge and belief.

2 St. Hilaire acknowledges that failure to make a careful and thorough analysis and interpreation of all factors affecting the value of the real estate when listing the sale that real estate, constitutes a violation of 32 M.R.S.A. Section 13067(1)(F); and Chapter 330 Sectin 3(A) of the Commission Rules and Regulations.

3. St. Hilaire acknowledges that failure to disclose to his client any substanital discrepancy between the listed price and market value constitutes a violation of 32 M.R.S.A. Section 13067(1)(F); and Chapter 330 Section 3(B) of the Commission Rules and Regulations.

4. St. Hilaire acknolwedges his failure to protect and promote the interests of the principal constitutes a violation of 32 M.R.S.A. Section 13067(1)(A) and (G).

5. St. Hilaires agrees to pay a $750.00 fine to the Commission on or before January 31, 1992.

6. St. Hilaire agrees to successfully complete course work in addition to his continuing education requirements for renewal. Such course work shall consist of the Commission approved courses entitled, "Agency Relationships in Real Estate" to be completed by February 15, 1992 and "Role of the Designated Broker" to be completed by December 31, 1992.

7. The Director and the Commission agree that no further agency or legal action will be initiated against St. Hilaire by the Commission based upon the facts described herein, except that in the event that St. Hilaire does not fully comply with the terms of this agreement, the Director of the Commission shall initiated whatever action is deemed necessary.

DATED:_____ _____
Clement St. Hilaire

DATED:_____ _____
Witness

DATED:_____ _____
Carol J. Leighton
Director Maine Real
Estate Commission

APPROVED

Dated:_____

Timothy W. Collier
Assistant Attorney
General
Commission Counsel
for the Commission
Office of the Attorney General

Walter H. Foster, Jr.
Chairman
Maine Real Estate

Carol J. Leighton, Director,
Maine Real Estate Commission,
Petitioner,

vs.

Timothy St. Hilaire and
Clement St. Hilaire,
Respondents

DECISION
AND
ORDER

On April 30 and May 28, 1992 and Maine Real Estate Commission ("Commission") held an adjudicatory hearing and conducted public deliberations regarding this matter. The hearing was held at the Department of Professional and Financial Regulations, Gardiner Annex, Gardiner, Maine. Members of the Commission who participated in the hearing were: Joanne Dennis, Chairman and Presiding Officer, Arthur A. Dexter, Wlater H. Foster, Jr., Hobart F. Harnden, J. Franklin Howe, and Sharon A. Millett. Carol J. Leighton, Director fo the Maine Real Estate Commission ("Petitioner") was present and was represented by Assistant Attorney General Timothy W. Collier. Timothy and Clement St. Hilaire ("Respondents") were present and appeared pro se.

ISSUES PRESENTED

This matter was brought by Petitioner pursuant to 32 M.R.S.A. Section 13069(6)(C) as

a result of a staff investigation. The issues presented to the Commission were as follows:

1. Whether Respondent Timothy St. Hilaire failed to disclose to his client a substantial discrepancy between the listed price and the market value of which he should have been aware, in violation of 32 M.R.S.A. Section 13067(1)(F) and Chapter 330, Section 3(B) of the Maine Real Estate Commission Rules.

2. Whether Respondent Timothy St. Hilaire failed to protect and promote the interests of the principal with absolute fidelity, by failing to disclose a substantial discrepancy beween the listed price and the market value of real estate listed for sale with the agency in violation of 32 M.R.S.A. Section 13067(1)(G).

3. Whether Respondent Timothy St. Hilaire's conduct, taken as a whole, demonstrate incompetency and improper dealings, in violation of 32 M.R.S.A. Section 13067(1)(A).

4. Whether Respondent Clement St. Hilaire as designated broker, failed to require affiliates of St. Hilaire Agency to disclose to clients any substantial discrepancy between the listed price and

market value of which they are aware when listing real estate for sale with the agency in violation of 32 M.R.S.A. Section 13067(1)(F), Section 13067(1)(I)(1) and Chapter 330, Section 3(B) of the Maine Real Estate Commission Rules.

5. Whether Respondent Clement St. Hilaire as designated broker, failed to protect and promote the interests of the principal with absolute fidelity, by not ensuring that affiliates of St. Hilaire Agency disclose to clients any substntial discrepancy between the listed price and market value of which they are aware when listing real estate for sale with the agency in violation of 32 M.R.S.A. Section 13067(1)(G).

6. Whether Respondent Clement St. Hilaire's conduct taken as a whole, demonstrates incompetency and improper dealings, in violation of 32 M.R.S.A. Section 13067(1)(A).

FINDINGS OF FACT

1. Respondent Timothy St. Hilaire is a real estate broker licensed with St. Hilaire Agency in Auburn, Maine. Respondent Clement St. Hilaire is a real estate broker licensed with the designated broker of St. Hilaire Agency with offices in Rumford, Maine and

Auburn, Maine.

2. On May 23, 1990 Respondent Timothy St. Hilaire contacted Anthony Albert ("Albert") regarding the possible sale of his mother's property located on Blanchette Street in Lewiston. Albert was executor of his mother's estate. Albert did not list the property with Respondent Timothy St. Hilaire at that time.

3 Respondent Timothy St. Hilaire contacted Albert on two additional occasions attempting to list the property, and eventually arranged to meet with Albert and his sister, Constance Tardif ("Tardif") on July 14, 1990. During that meeting, Albert signed a listing agreement which stipulated that the property was to be listed for a period of six months at a price of $130,000.

4. The sales price was established by Albert and Tardif. Respondent Timothy St. Hilaire did not render an opinion of value and did not discuss whether there was any discrepancy between the listed price and the market value of the property.

5. The policy of the St. Hilaire Agency is to allow the seller to establish the listing price. When listing property, licensees affiliated with the agency do not

make a careful and thorough analysis and interpretation of all factors affecting the value of the real estate, do not routinely provide information pertaining to comparable sales and only provide such information when specifically asked by a seller.

6. On January 5, 1991 Respondent Timothy St. Hilaire showed the property to Mark and Arlene Pepin ("the Pepins"). The Pepins did not make an offer on the property at that time.

7. On January 14, 1991 Albert's listing with St. Hilaire Agency expired.

8. On January 16, 1991 Albert, Tardif and Respondent Timothy St. Hilaire met at the Blanchette Street property to discuss relisting the property. Upon arrival, Albert and Tardif ("the sellers") discovered the carpet in the hall had been torn and a pan, which Respondent Timothy St. Hilaire had placed in a closet to collect water from a leaking faucet was about to overflow. A dispute resulted between the sellers and Respondent Timothy St. Hilaire regarding responsibility for the condition of the property. The sellers informed Respondent Timothy St. Hilaire they were dissatisfied with his service, asked him to return the key

to the property and told him they would not relist the property for sale through the agency.

9. During the meeting on January 16, 1991 Respondent Timothy St. Hilaire informed Albert and Tardif there was a party he had previously shown the property to who was interested in the property. The six month carry-over clause in th elisting agreement was discussed and Albert and Tardif requested a list of all persons who had viewed the property through St. Hilaire Agency. Respondent Timothy St. Hilaire said he agreed to forward the list.

10. On February 3, 1992 Respondent Timothy St. Hilaire prepared an offer on the Blanchette Street property from the Pepins for a purchase price of $85,000. On that date, Respondent Timothy St. Hilaire went to Albert's residence to deliver the offer. Albert refused to discuss the terms of the offer or accept delivery of it.

11. At the time of the Pepins' offer, a check for an earnest money deposit of $1,000 was given to Respondent Timothy St. Hilaire. On February 4, 1991 the Pepins' check was deposited into the agency trust account.

12. On February 4, 1991 Respondent Clement St. Hilaire advised Respondent Timothy St. Hilaire to mail the Pepins' offer to Albert, along with a cover letter which they both signed. The letter stated, "You are required to, 'Respondent in Kind', within three days of the submittion [sic] of this offer ... We hope not to have to pursue this matter under our legal authority." Copies of the offer and cover letter were forwarded to Tardif. Both letters were mailed certified with a return receipt requested. Albert accepted the letter; Tardif did not. Included with the cover letter was a list of people who had viewed the Blanchette Street property. All the names on the list except for the Pepins were blacked out. Neither Albert nor Tardif contacted the agency regarding the offer.

13. On February 9, 1991 Respondent Timothy St. Hilaire prepared another offer from the Pepins on the Blanchette Street property for a purchase price of $86,000. At that time, Respondent Timothy St. Hilaire compiled comparable sales to show that the $86,000 being offered was within the range of the market value of the property.

14. Copies of the offer for $86,000 and a second cover letter, signed by Respondent

Timothy St. Hilaire were again sent to Albert and Tardif by certified mail with a return receipt requested. Neither Albert nor Tardif accepted the letters and neither contacted the agency for information.

15. On February 26, 1992 Resondent Clement St. Hilaire issued a check in the amount of $1,000 payable to the Pepins for the return of their earnest money deposit.

DISCUSSION & CONCLUSION OF LAW

Based on the above findings and on the whole record, the Commission makes the following conclusions of law:

1. Respondent Timothy St. Hilaire's failure to disclose to his client a substantial discrepancy beween the listed price and the market value of which he should have been aware violated 32 M.R.S.A. Section 13067(1)(F) and Chapter 330, Section 3(B) of the Maine Real Estate Commission Rules. The property was listed at $130,000 the price requested by the sellers. Once Respondent Timothy St. Hilaire finally performed an analysis, he came up with a market value of $86,000 -- roughly 30% less than the listed price. Furthermore, the offer that same in was at $86,000 and the appraisal put the value

at $94,000. Clearly, this was a substantial discrepancy of which he should have been aware if he had been acting in a reasonable manner. There was unrebutted testimony that Respondent Timothy St. Hilaire made no comment at all to the sellers about their suggested price.

2. Respondent Timothy St. Hilaire failed to protect and promote the interests of the principal with absolute fidelity by failing to disclose a substantial discrepancy between the listed price and the market value of the real estate in violation of 32 M.R.S.A. Section 130667(1)(G). The first finding of a breach of the more specific duty set forth in the rule leads to a finding of a violation of this important duty to protect and promote the interests of one's client. This was information that the client was entitled to and should have been given.

3. Respondent Timothy St. Hilaire's conduct in this matter, taken as a whole, demonstrates incompetency and improper dealings in violation of 32 M.R.S.A. Section 13067(1)(A). Certainly, clearly ignorance of the rules of the Maine Real Estate Commission can constitute incompetency on the part of a licensee. Furthermore, the Respondent's written submissions and arguments at the

hearing contain numerous errors and misconceptions of his role and responsibilities in this transaction.

4. Respondent Clement St. Hilaire as designated broker, failed to require the affiliates of the agency to disclose to clients any substantial discrepancy between the listed price and market value of which they were aware when listing real estate for sale with the agency in violation of 32 M.R.S.A. Sections 13067(1)(F), 13067(1)(I)(1) and Chapter 330, Section 3(B) of the Maine Real Estate Commission Rules. The evidence is very clear of the failure to disclose the discrepancy in this case. The agency had no policy in place to ensure compliance and the closing statement of Respondent St. Hilaire reveals his complete lack of understanding of his obligations on this score, as designated broker of the agency.

5. Respondent Clement St. Hilaire as designated broker, failed to protect and promote the interests of the principal with absolute fidelity by not ensuring that affiliates of the agency disclose to clients any substantial discrepancy between the listed price and makret value of which they were aware when listing real estate for sale with

the agency in violation of 32 M.R.S.A. Section 13067(1)(G). The evidence shows that Respondent Clement St. Hilaire was actively involved at an early stage of this transaction and signed some of the documents involved. The testimony showed that he knew generally what was going on all along and was aware of Timothy's actions. The principal certainly could have been harmed here by failing to receive knowledge that the agency's affiliate should have obtained and communicated.

6. Clement St. Hilaire's conduct in this matter, taken as a whole, demonstrates incompetency and improper dealings in violation of 32 M.R.S.A, Section 13067(1)(A). As designated broker he has an obligation to know and understand the applicable law and rules and the evidence in this case shows very clearly that he did not.

ORDER

WHEREFORE, the Commission hereby orders both Respondents to complete successfully (with a score on the course examination of 75% or better) the course "The Role of the Designated Broker" on or before December 31, 1992, in addition to other continuing education requirements. The Commission further orders Respondent Timothy St. Hilaire

to pay a fine in the amount of $2,000 and Respondent Clement St Hilaire to pay a fine in the amount of $2,500. The fines must be paid to the Commission within 30 days of the date of receipt of this Decision and Order.

RECORD VOTE

Joanna Dennis, Chairman	Assent
Arthur A. Dexter	Assent
Walter H. Foster, Jr.	Assent
Hobart F. Harden	Assent
J. Franklin Howe	Assent
Sharon A. Millett	Assent

Dated: 7/16/92 s/JOANNA DENNIS, Chairman
Maine Real Estate Commission

APPEAL RIGHTS

Pursuant to 32 M.R.S.A. Section 13068(3) the parties are hereby notified that they have the right to appeal the Commission's decision to the Administrative Court within thirty (30) days of receipt of this Decision and Order.

Department of Professional and Financial Regulation
Maine Real Estate Commission

Carol J. Leighton, Director,
Maine Real Estate Commission,
Petitioner,

vs.

Timothy St. Hilaire and
Clement St. Hilaire,
Respondents

DECISION AND ORDER

On January 21, 1993 the Maine Real Estate Commission ("Commission") held an adjudicatory hearing and on February 18, 1993 it conducted public deliberations regarding this matter. The proceedings were held at the Department of Professional and Financial Regulations, Gardner Annex, Gardner, Maine. Members of the Commission who participated in the hearing were: Joanna Dennis, Chairman and Presiding Officer, Hobart F. Harnden, John C. Harris, J. Franklin Howe, and Sharon A. Millett. Carol J. Leighton, Director of the Maine Real Estate Commmission ("Petitioner") was present and was represented by Assistant Attorney General Timothy W Collier. Timothy and Clement St. Hilaire ("Respondents") were

present and appeared pro se.

ISSUES PRESENTED

This matter was brought by Petitioner pursuant to 32 M.R.S.A. Section 13069(6)(C) as a result of a staff investigation. The issues presented to the Commission were as follows:

1. Whether Respondent Timothy St. Hilaire failed to comply with a Commission order, in violation of 32 M.R.S.A. Section 13067(1)(M).

2. Whether Respondent Clement St. Hilaire failed to comply with a Commission order in violation of 32 M.R.S.A. Section 13067(1)(M).

FINDINGS OF FACTS

1. Respondent Timothy St. Hilaire was at the time of the hearing a real estate broker not then affiliated with an agency. Respondent Clement St. Hilaire was at the time of the hearing a real estate broker licensed with and designated broker of St. Hilaire Agency in Rumford, Maine.

2. On July 16, 1992 the Commission issued an order whereby Respondent Timothy St. Hilaire was to pay a fine in the amount of $2,000 within 30 days of receipt of the decision. Respondent Clement St. Hilaire was ordered to apply a fine in the amount of

$2,500 within 30 days of receipt of that decision. In addition, both Respondents were ordered to complete successfully on or before December 31, 1992 the course "The Role of the Designated Broker" with a course grade of 75% or better.

3. Both Respondents received the July 16, 1992 decision on July 24, 1992.

4. No fine payment have been received from either Respondent, nor has any evidence of completion of the course been received from either Respondent.

DISCUSSION & CONCLUSION OF LAW

The analysis is identical for both Respondents. Both were parties before the Commission and, as a result of that proceeding, recieved a Decision and Order requiring each of them to pay a fine and complete an educational course. The evidence is clear that neither has done so. They have attempted to appeal that Commission Decision and order but they have never asked for nor received a stay of that Decision and Order. That Decision and Order remains legally binding, and each Respondents' noncompliance constitutes a violation of 32 M.R.S.A. Section 13067(1)(M).

ORDER

WHEREFORE, the Commission hereby orders that the real estate broker license of each Respondent is hereby suspended until each complied with the Commission order dated July 16, 1992 including payment of the fine and successful completion of the course "The Role of the Designated Broker," with a course grade of 75% or better in addition to other continuing education requirements.

RECORD VOTE

Joanna Dennis, Chairman	Assent
Hobart F. Harnden	Assent
John C. Harris	Assent
J. Franklin Howe	Assent
Sharon A. Millett	Assent

DATED 3/11/93

s/HOBART F. HARDEN
Acting Chairman
Maine Real Estate
Commission

APPEAL RIGHTS

Pursuant to 32 M.R.S.A. Section 13068(3) the parties are hereby notified that they have the right to appeal the Commission's decision to the Administrative Court within thirty (30) days of receipt of this Decision and Order.

JBJ RESIDENTIAL APPRAISERS
871 Court Street
Auburn, Maine 04210
(207) 777-5005

May 7, 1990

Estate of Anthony Albert
6 Blanchette Street
Lewiston, ME 04240
ATTN: Constance Mae Tardif
Anthony T. Albert, Jr.

In response to your request of April 16, 1990, we have examined and appraised the real property located at 6 Blanchette Street, Lewiston for the purpose of reporting to you our opinion of its market value.

Based on the examination and study made, we have formed the opinion that on May 1, 1990 the fee simple title of the subject property had a market value of

NINETY FOUR THOUSAND DOLLARS ($94,000)

The following report presents a review of the appraisal process and details our analysis of the data on which the estimate of value is predicated.

Respectfully submitted,

s/John R. Preble

s/John D. Wheaton

UNIVERSITY OF SOUTHERN MAINE

Center for Real Estate Education,
School of Business, Economics and Management

68 High Street
Portland, ME 04101
(207) 874-6520

Clement St. Hilaire
1133 Center Street
Auburn ME 04210

THE ROLE OF THE DESIGNATED BROKER COURSE RECORD

This is to certify that Clement A. St. Hilaire has achieved a score of 75 in Role of the Designated Broker on 05-19-94.
Program #64-5B*1A94 Certified by: s/S. Jones
Instructor: Elaine Richer
Location: Portland
This original certificate must be sent to the MAINE REAL ESTATES COMMISSION as proof of completion.

UNIVERSITY OF SOUTHERN MAINE

Center for Real Estate Education,
School of Business, Economics and Management

68 High Street
Portland, ME 04101
(207) 874-6520

Timothy St. Hilaire
P.O. Box 3163
1133 Center Street
Auburn, ME 04210

THE ROLE OF THE DESIGNATED BROKER COURSE RECORD

This is to certify that Timothy L. St. Hilaire has achieved a score of 87 in Role of the Designated Broker on 05-19-94.
Program #64-5B*1A94 Certified by: s/S. Jones
Instructor: Elaine Richer
Location: Portland
This original certificate must be sent to the MAINE REAL ESTATES COMMISSION as proof of completion.

RECEIVED
MARCH 22, 1991
Real Estate Commission

March, 1991

Dear Sir:

I, Constance Tardif, am writing on behalf of my brother Anthony Albert, and myself to inform you of a nightmare experience with St. Hilaire Agency. We feel this nightmare should be brought to someones attention in hopes that noone has to experience this.

On July 14, 1990 my brother, who is executor of our mother's estate signed an agreement for six months to sell her property.

First off I want it to be known that we did not seek out the agency Mr. Tim St. Hilaire showed up at my brothers with no phone call, no warning, just out of the blue wanting to place the house on the market. We were not ready to do so at this time. We still had alot of cleaning and things we wanted to do to make the house more sellable. He was constantly showing up unannounced week after week, bothering my brother. He claims he had all kinds of interested buyers. My brother finally signed more or less to get him off our

backs. Once we signed, the agency made no contact with us. We later learned that Tim St. Hilaire rides around looking for unshoveled driveways and no lights on. Then goes to the city building and checks on the owner. If deceased, he goes after the executor. There were and still are lights on in the house plus the yard is always taken care of since she died.

I called the agency once and asked if it was possible to rent with the understanding they could still show the property. I spoke to the father, Clement St. Hilaire.. He had no idea who I was and never asked. He gave me this big story of the horrors of renting but never said I couldn't do so. Two weeks later Tim called and asked if soneone was moving in. I asked how could that be when your father said no I guess. I was then informed there was a miscommunication and we could rent. It was then too later. The father and son have no communication between them.

On January 14, 1991 the agreement ended. Tim called my brother and we met on January 16th. We were very upset when we saw the house. We had been going in to check on the heat but never really checked that closely. Hallway carpeting had been cut and lifted, in

a kitchen closet there are faucets for a washer. I opened the closet, found a dishpan full of water about to overflow. When Tim arrived we asked for an explanation. None of this was like this when we gave the agency a key. Tim had no explanation for the carpet. Claims it was old and worn out. He had no intentions of doing anything about it. We have since tried to glue it down but it was impossible so we have now had to remove it and replace it with all new. An added expenses thanks to them. The faucet had a drip so he put the pan there. We asked why he didn't call and tell us to check it so there wouldn't be a problem. He could not of carred less and it was no big deal. Tim then started talking to us to paint, paper, change thins, change that, etc. We told him we would have done some of these things had he not pressured us into signing. We asked Tim before we signed if we should do any of these things and he said no. Now he changed the whole story.

We were very displeased with the agency and asked for the key back, remove the sign and that would be the end of it. Well, you don't tell these people no. Tim told us he would give us the names of the clients that he showed the house to. After 2 1/2 hours of

arguing, us not wanting to resign and him not taking no for an answer we became very upset. He finally gave us the key but we had to remove the sign. I think he felt if we left it, it was no big deal. He said he would send us the list of names.

The following week on January 22nd, I called the agency with only one thing in mind. The list of clients as promised. Unfortunately, for me I got the father. He asked me if I had changed my mind to resign in the nicest voice. When I said no, that was a very big mistake. He got very rude, wouldn't let me talk, if I tried he talked when I did, was raising his voice at me and swearing plus accusing me of all kinds of things. He told me that we had caused the lost of sale because some total stranger came walking in the house and the woman thought she was going to be raped. His words. I tried to explain but he wouldn't let me. The person was my son going to mow the lawn. Tim was there so he walked in, said hi, went into the garage and mowed the lawn. Now is it our fault that Tim was so ignorant as to just let a total stranger to him just walk in and say nothing? If you're responsible for someone elses property you don't let someone walk in without asking who

they are. Sorry, but I don't see how this could be our fault. He then went on to accuse our family of going in there, ripping up carpeting and turning on faucets. I did not have to be subject to this kind of insult so I asked him for the list and hung up on him.

On Sunday, February 3rd Tim showed up at my brothers. He never called just shows up. He had taken a deposit for $1,000 and to sell it for $85,000. This is $45,000 less than the asking price. He told me brother if we didn't take this offer legal action would be taken and we could be sued. We had 3 days to make up our minds. My brother told him no and asked him to leave. It was over one hour before he left. Still won't take no for an answer.

On Wednesday, February 6th we received certified letters stating we had to accept this offer or legal action would be taken. He wanted an intelligent answer. I thought my brother had given him one.

On February 8th he called me and I refused to talk to him. On February 10th he called my brother he also refused to talk to him. We had spoken to a lawyer and he told us to ignore him. On February 13th we both

received another certified letter. We both refused to sign for them.

We have had to hire a lawyer and have him send them a letter. We will not accept any offers, he has no business to think he can accept an offer or talk to any former clients and to have no further contact with us. Because these people will not accept no for an answer and refuse to listen to us. We've had to seek legal advice which has cost us money.

We cannot see where this agency has done us any favors. We felt they should be reported for their conduct. We are sure this is not normal way of conducting business.

Thank you for taking the time to read this.

Sincerely,

s/Constance Tardif